

S.B. CIVIL WRIT PETITION NO.80/2004
Chuni Lal vs. Gyan Chand and another.

Date : 27.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. D.R. Choudhary, for the petitioner.

Mr. V.K. Mathur, for the respondent.

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Heard learned counsel for the parties.

It appears from the facts of the case that there are rival claims about the property in dispute of the plaintiff and defendant so far as ownership is concerned.

The plaintiff filed suit for eviction on various grounds including ground of default. The trial court refused to determine the rent vide order dated 5.9.1995 but the appellate court in appeal set aside the order of trial court and determined the rent of the suit premises at the rate of Rs.150/- per month.

According to learned counsel for the petitioner, since there is no relationship of landlord and tenant between the plaintiff and defendant, therefore, the trial court should not have determined the rent under Section 13(3) of Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for short the "Act"). Learned counsel for the petitioner relies on the judgment of this Court reported in 1991(1) W.L.C. (Raj.) page 568 wherein this Court on finding that there is a serious dispute of the property in question, the trial court

should not have determined the rent in the circumstances of that case.

It is clear from the facts of the case that the first appellate court accepted as a material fact that the petitioner did not reply the notice in which the plaintiff/respondent claimed that the petitioner is his tenant and thereafter, determined the rent for the suit premises.

Since the parties will be free to lead their evidence on all other issues including the issue whether petitioner is tenant or not and unless and until the plaintiff will be able to prove that the petitioner is his tenant in the premises, he cannot get decree for eviction against the petitioner. Therefore, the order under challenge will not affect the petitioner in any manner. Even if defence of the petitioner is struck off due to non-payment of the determined rent, he will not be able to prove that he was not defaulter and that is not the case of the petitioner even in alternative.

Rent is determined under Section 13(3) of the Act so that in case, the tenant wants to contest the allegation of default, then he is required to pay the arrears of rent and further he is required to pay rent month by month during the pendency of the suit. In case, where the tenant is not admitting himself to be tenant, then the very foundation for the relief

becomes relationship of landlord and tenant and by the impugned order, his right to disprove the claim of the plaintiff of his being landlord has not been denied.

In view of the above, this Court is not inclined to interfere in the order determining rent passed by the court below.

Consequently, this writ petition, having no merit, is hereby dismissed.

However, it is made clear that the trial court will be free to decide the relationship of landlord and tenant irrespective of the fact that the appellate court drew an inference that since the petitioner did not reply to the notice of the plaintiff, therefore, prima-facie he is tenant.

(PRAKASH TATIA), J.

S.Phophaliya